

## REMARKS

The Advisory Action of June 22, 2006, THAT TOOK 2 1/2 MONTHS TO ISSUE, appears to have lost track of the claimed invention. Therefore, the claims are presented above.

On the one hand, the independently claimed invention is a wall member having a cast concrete base with a wall portion with a duct.

On the other hand, the Minor patent of the rejection for anticipation under 35 USC 102 has a concrete base B in the Action with a wall portion 20 and a duct 16, but the duct is in 10' and not in the wall portion 20 with the concrete base, as claimed.

The Advisory Action but not the patent maintains that 10' is a wall portion. 10" is NOT defined in the patent. Therefore, the rejection is unsupported speculation.

Unsupported speculation as to the qualities of that apparatus can form no basis for rejecting claim .... *In re Glass*, 176 USPQ 529, 532 (CCPA 1973).

The rejection remains unsupported speculation even though the final Action relies on a drawing of the patent to call 10' a wall portion. Patent drawings without the support of written disclosure are an improper basis of rejection. Speculative modeling premised on unstated assumptions in prior art patent drawings cannot be the basis for challenging the validity of patent claims. See, *RON NYSTROM, Plaintiff-Appellant, v. TREX COMPANY, INC. and TREX COMPANY, LLC*, 76 U.S.P.Q.2D 1481 (Fed. Cir. 2005).

The unsupported speculation of the rejection is, further, contrary to the apparent disclosure of the Minor patent. While 10' is not defined, 10 is, and is "... a leach field ... The field leg, which is indicated generally at 10 ...." A leach field is not a wall member with a

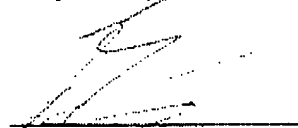
concrete base, as claimed.

**PRIOR ART MUST BE CONSIDERED IN ITS  
ENTIRETY, INCLUDING DISCLOSURES THAT  
TEACH AWAY FROM THE CLAIMS *MPEP 2141.02VI***  
(emphasis original)

Even if the leach field 10' could be considered a wall member, contrary to the patent that defined the wall at 20, it does not have a concrete base, as claimed, and could not have one and retain its leach field function. Moreover, it is made of aggregate, which is not a wall member that is portable, as also claimed.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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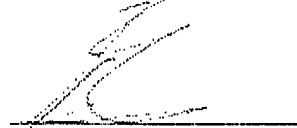
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